



**UNITED STATES DEPARTMENT OF COMMERCE**  
**Patent and Trademark Office**

Address: COMMISSIONER OF PATENTS AND TRADEMARKS  
Washington, D.C. 20231

SK

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/173,134	10/15/98	GABRIEL	G 364106/176

STROOCK & STROOCK & LAVAN  
180 MAIDEN LANE  
NEW YORK NY 10038

PM92/1026

EXAMINER

NGUYEN, S

ART UNIT

PAPER NUMBER

3643

DATE MAILED:

10/26/99

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

# Office Action Summary

Application No.  
09/173,134

Applicant(s)  
Gabriel et al.

Examiner  
Son T. Nguyen

Group Art Unit  
3643



☒ Responsive to communication(s) filed on Oct 5, 1999

☒ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 35 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

## Disposition of Claim

- ☒ Claim(s) 1-6 is/are pending in the applicant  
Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration
- ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- ☒ Claim(s) 1-6 is/are rejected.
- ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- ☐ Claims \_\_\_\_\_ are subject to restriction or election requirement.

## Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- ☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

- ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- ☐ All ☐ Some\* ☒ None of the CERTIFIED copies of the priority documents have been
- ☐ received.
- ☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_
- ☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

☒ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

- ☐ Notice of References Cited, PTO-892
- ☒ Information Disclosure Statement(s), PTO-1449, Paper No(s). 8
- ☒ Interview Summary, PTO-413
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Notice of Informal Patent Application, PTO-152

— SEE OFFICE ACTION ON THE FOLLOWING PAGES —

Art Unit: 3643

### DETAILED ACTION

1. An interview was held on 9/13/99 with the Applicant and the Applicant's representative. However, the application was not available to the Examiner for mailing of the interview summary. Therefore, an interview summary of the meeting on 9/13/99 is attached with this Office Action.

#### *Claim Rejections - 35 U.S.C. § 103*

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. **Claims 1-6** are rejected under 35 U.S.C. 103(a) as being unpatentable over Lovitt (US 3,978,819). Lovitt discloses a cage system comprising a rack 11 having a depth; a cage disposed in the rack in which the cage has a cage bottom 17 having a plurality of integral side walls 23-26, a floor 21, and an open top. In addition, Lovitt discloses in column 3, lines 15-16, adding more than one row of cages on the tier, thus creating a double-sided rack. However, Lovitt does not disclose a length of the cage bottom being less than 36 inches, being less than 18 inches, or an area of the cage bottom being in the range of 80 square inches  $\leq l \times w \leq$  140 square inches. It would have been obvious as a matter of choice to one having ordinary skill in the art at the time

Art Unit: 3643

the invention was made to dimension the cage bottom of Lovitt with various length, width, and depth in order to accommodate different sizes of the contained animal. Regarding claim 5, Lovitt does not disclose a sum of the length of a portion extending beyond the rack and a depth of the rack being less than 36 inches. It would have been obvious as a matter of choice to one having ordinary skill in the art at the time the invention was made to dimension the cage bottom and the rack of Lovitt with various lengths, widths, and depths in order to accommodate different sizes of the contained animal and different housing entrances where the rack is to be stored. In addition, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have the cage varied in sizes, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art.

#### ***Response to Arguments***

4. Applicant's arguments filed on 10/5/99 have been fully considered but they are not persuasive. The Applicant argues that the Lovitt's invention is not a cage level barrier system; therefore, it does not teach the special environment for which the present invention is designed, namely an environment in which the entire environment is controlled by the cage size, materials, food, and water supplying mechanism as defined by the remarks made by the Applicant on page 5, lines 25-26. In addition, the Lovitt patent does not teach the actual dimensions of the cage. Lovitt's cage system is a cage level barrier system as defined by the Applicant because it

Art Unit: 3643

facilitate in the care and maintenance of the occupants of the cage such as rodents. Therefore, the factors listed above such as the cage size, materials, food, and water supply are a part of the care and maintenance system in Lovitt's cage system. As for the dimensions of the cage, see the above rejection.

Applicant argues that Lovitt's cage does not teach the present invention claimed range of cage floor area which meets the Federal guidelines of housing a plurality of rats, a hamster or a guinea pig in a cage having less than the claimed 80 square inches is not in conformance with industry standards. As indicated in the above rejection, Lovitt is silent about cage dimensions; however, it would have been obvious to one of ordinary skill in the art to make the cage floor area in conformance with Federal guidelines. If Federal guidelines are to be applied for the present invention, the same guidelines are to be applied for Lovitt's invention.

### ***Conclusion***

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37

Art Unit: 3643

CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Son T. Nguyen whose telephone number is (703) 305-0765. The examiner can normally be reached on Monday - Friday from 8:30 a.m. to 5:00 p.m. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael J. Carone, can be reached at (703) 306-4198. The fax number of the Art Unit is (703)-305-7687. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 306-4177.

Son T. Nguyen *STN*

Patent Examiner GAU 3643

October 25, 1999

  
MICHAEL J. CARONE  
SUPERVISORY PATENT EXAMINER